MAJLIS DAERAH HULU TERENGGANU A

v.

TENAGA NASIONAL BHD

COURT OF APPEAL, PUTRAJAYA B
LOW HOP BING JCA
ABU SAMAH NORDIN JCA
LINTON ALBERT JCA
[CIVIL APPEAL NO: T-01-185-08]
20 JUNE 2012 C

LOCAL GOVERNMENT: *Rates - Assessment - Validity of - Whether notice of assessment issued in compliance with ss. 137 and 141 of the Local Government Act 1976 - Whether notice of assessment valid and duly issued under Local Government Act 1976* D

The appellant assessed and issued notice of assessment dated 6 February 2005 in respect of the respondent's hydroelectric station which the respondent objected as being excessive. The respondent thus sought a declaration under O. 53 of the Rules of the High Court 1980 that the notice of assessment was null and void. The respondent's complaint was that when it received the 2005 notice of assessment, there was no prior notice issued in compliance with s. 141 of the Local Government Act 1976 ('the Act') which rendered the notice of assessment null and void and also amounted to breach of the rules of natural justice. The appellant's position was that the 2005 notice of assessment was based on the 1999 valuation list which was extended by the State Authority under s. 137(3) of the Act. The High Court Judge allowed the application and hence this appeal by the appellant. The issue in the present appeal was whether the 2005 notice of assessment was a valid notice under the Act. E F G

Held (allowing appeal with costs here and below; setting aside order of High Court)
Per Abu Samah Nordin JCA delivering the judgment of the court: H

(1) The 2005 notice of assessment was based on the 1999 valuation list, which was extended by the State Authority under s. 137(3) of the Act. There was no new valuation list prepared under s. 137(3) of the Act. By virtue of s. 137(2) of the Act the 1999 valuation list shall remain in force until it is I

superceded by a new valuation list. In light of this, there was no statutory obligation to give notice in terms of s. 141 of the Act. The appellant had not acted in breach of ss. 137 or 141 of the Act when it issued the 2005 notice of assessment based on the 1999 valuation list. In the circumstances, the said notice of assessment was a valid notice and duly issued under the Act. (paras 11 & 12)

Bahasa Malaysia *Translation Of Headnotes*

Perayu membuat penilaian dan mengeluarkan notis taksiran bertarikh 6 Februari 2005 berkaitan dengan stesyen hidroelektrik responden yang responden membantah sebagai terlalu tinggi. Responden oleh itu membuat permohonan deklarasi di bawah A. 53 Kaedah-Kaedah Mahkamah Tinggi 1980 bahawa notis taksiran tersebut adalah batal dan tidak sah. Aduan responden adalah bahawa apabila ia menerima notis taksiran 2005 tersebut, tidak ada notis awal yang diberikan sebagai mematuhi s. 141 Akta Kerajaan Tempatan ('Akta') yang menjadikan notis taksiran tersebut batal dan tidak sah dan juga suatu pelanggaran keadilan asasi. Penjelasan perayu adalah bahawa notis taksiran 2005 berdasarkan kepada senarai penilaian tahun 1999 yang diberikan oleh Pihak Berkuasa Negeri di bawah s. 137(3) Akta. Hakim Mahkamah Tinggi membenarkan permohonan dan dengan itu rayuan ini oleh perayu. Isu di dalam rayuan ini adalah sama ada notis taksiran 2005 adalah notis yang sah di bawah Akta.

Diputuskan (membenarkan rauuan dengan kos di mahkamah ini dan di mahkamah di bawah; mengetepikan perintah Mahkamah Tinggi)
Oleh Abu Samah Nordin HMR menyampaikan penghakiman mahkamah:

(1) Notis taksiran 2005 adalah berdasarkan kepada senarai penilaian tahun 1999, yang diberikan oleh Pihak Berkuasa Negeri di bawah s. 137(3) Akta. Tidak ada senarai penilaian baru yang disediakan di bawah s. 137(3) Akta. Berikutan s. 137(2) Akta, penilaian tahun 1999 sepatutnya kekal berkuatkuasa sehingga ia digantikan oleh senarai penilaian baru. Berikutan dengan ini, tidak ada kewajipan statutori untuk memberikan notis dalam terma s. 141 Akta. Perayu dengan itu tidak bertindak melanggar ss. 137 atau 141 Akta apabila ia mengeluarkan notis taksiran 2005 berdasarkan kepada senarai

penilaian tahun 1999. Dalam keadaan demikian, notis taksiran tersebut adalah notis yang sah dan dikeluarkan dengan betul di bawah Akta.

Legislation referred to:
Local Government Act 1976, ss. 137(2), (3), 141(1), 142
Rules of the High Court 1980, O. 53

For the appellant - Azwam Abdul Wahab; M/s Mohd Mohtar & Co
For the respondent - Shahul Hameed Amirudin (Sonia Amirudin with him); M/s Zul Rafique & Partners

[Appeal from High Court, Kuala Terengganu; Judicial Review No: 13-01-2006]

Reported by S Barathi

JUDGMENT

Abu Samah Nordin JCA:

[1] This is the appellant's appeal against the decision of the learned judge of the High Court, Terengganu who granted the respondent's application under O. 53 of the Rules of the High Court 1980 for a declaration that the notice of assessment no. J/PT5068 dated 6 February 2005 issued by the appellant was null and void.

[2] The notice of assessment was in respect of the respondent's hydroelectric station situated on Lot 5068 Mk. Jenagor, Hulu Terengganu. The appellant assessed the rates payable on the said property for 2005 year of assessment in the sum of RM4,992,000, which the respondent objected as being excessive.

[3] The facts leading to the respondent's application for judicial review had been fully set out in the judgment of the learned judge and it is not necessary to restate them here.

[4] The issue in this appeal is whether the 2005 notice of assessment was a valid notice under the Local Government Act 1976 ('the Act'). The respondent's contention is that the notice of assessment was null and void as it was issued in contravention of ss. 137 and 141 of the Act.

[5] Sections 137 and 141 of the Act provide:

S.137 (1) The local authority shall cause a Valuation List of all holdings not exempted from the payment of rates to be prepared containing:

(a) the name of the street or locality in which such holding is situated;

(b) the designation of the holding either by name or number sufficient to identify it;

(c) the names of the owner and occupier, if known;

(d) the annual value or improved value of the holding.

(2) The Valuation List together with the amendments made under section 144 shall remain in force until it is superceded by a new Valuation List.

(3) A new Valuation List which shall contain the same particulars as in subsection (1) shall be prepared and completed once every five years or within such extended period as the State Authority may determine.

S.141 (1) Where any Valuation List has been prepared or adopted under the provisions of section 137 the local authority shall give notice of the same and of the place where the Valuation List or a copy thereof may be inspected in the Gazette and by way of advertisement in two local newspapers at least one of which is in the national language.

(2) Any person claiming to be either the owner or occupier of a holding included in the Valuation List or the agent of any such person may inspect the Valuation List and make extracts therefrom without charge.

(3) The local authority shall give notice in the same manner of a day not being less than forty-two days from the date of notification in the Gazette when the local authority will proceed to revise the Valuation List and in all cases in which any holding is for first time valued or the valuation thereon has increased the local authority shall also give notice to the owner or occupier thereof.

[6] It was submitted that the appellant is statutorily bound by s. 137(3) of the Act to prepare and complete a new valuation list once every five years. By s. 141(1) of the Act it is mandatory for the appellant to give notice of the new valuation list and of its place of inspection in the gazette and by way of advertisement in two local newspapers, at least one of which must be in the national language.

[7] The respondent's complaint is that when it received the 2005 notice of assessment, there was no prior notice issued in compliance with s. 141 of the Act of the appellant's intention to issue a new valuation list to enable it to make objection, which it is entitled to under s. 142 of the Act. This failure to comply with the procedural requirement under s. 141 of the Act did not only render the notice of assessment null and void but it also amounted to a breach of the rules of natural justice.

[8] The appellant's position is that the 2005 notice of assessment was based on the 1999 valuation list. There was no new valuation list prepared under s. 137(3) of the Act. It had in its letter dated 15 June 2005 informed the respondent that the 1999 valuation list had been extended by the State Authority under s. 137(3) of the Act. By another letter dated 20 November 2005 the appellant wrote to the respondent's general manager in charge of the property division in Kuala Lumpur that the 2005 notice of assessment was based on the 1999 valuation list.

[9] The learned judge found that the appellant had failed to produce the extension order by the State Authority under s. 137(3) of the Act. As such he was of the view that a new list should have been prepared in compliance with s. 137(3) of the Act, the latest by 2004. The learned judge found as a fact that the appellant relied on the "new list". As the "new list" did not comply with the procedures prescribed by the Act, he held that the 2005 notice of assessment was null and void.

[10] Before us the respondent conceded that the 2005 notice of assessment was based on the 1999 valuation list. The appellant's letter dated 15 June 2005 informing the respondent that the 1999 valuation list was extended pursuant to s. 137(3) of the Act and the appellant's letter dated 20 November 2005 informing the respondent that the 2005 notice of assessment was based on the

A 1999 valuation list were produced as exhibits to the respondent's affidavit in-support of its application. There was therefore no necessity to produce the extension order by the State Authority. In fact this was not the issue before us.

B **[11]** Thus, the following facts are clear. The 2005 notice of assessment was based on the 1999 valuation list. It was extended by the State Authority under s. 137(3) of the Act. There was no new valuation list prepared under s. 137(3) of the Act. By virtue of s. 137(2) of the Act the 1999 valuation list shall remain in force
C until it is superceded by a new valuation list.

[12] In light of the abovesaid facts, we hold the view that there was no statutory obligation to give notice in terms of s. 141 of the Act. The appellant had not acted in breach of ss. 137 or 141
D of the Act when it issued the 2005 notice of assessment based on the 1999 valuation list. In our judgment the said notice of assessment was a valid notice and duly issued under the Local Government Act 1976.

[13] In the result we allowed the appeal by the appellant with
E costs here and below and set aside the said order of the High Court.

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